IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 3763 of 2006()

CRA.93/2006 of SESSIONS COURT, THODUPUZHA
CC.628/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NEDUMKANDOM

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REVN. PETITIONER: APPELLANT/ACCUSED

K.N.RAMACHANDRAN, S/O.NARAYANAN,
AGED 41 YEARS, KATTUVETTIYIL VEEDU,
MULLARIKKUDI KARA, KONNATHADI VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT

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1. P.K.ANIL, S/O.KUTTAPPAN,
PALLATHUPARAYIL VEEDU, EZHUKUMVAYAL KARA,
KALKOONTHAL VILLAGE, UDUMBANCHOLA TALUK.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR
SRI.TOM JOSE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON 16/08/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. 3763 of 2006

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Dated, this the 16th day of August 2007

O R D E R

The revision petitioner who was the accused in C.C. 528 of 2000 on the file of the Judl.First Class Magistrate, Nedumkandam for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, challenges the conviction entered and the sentence passed against him concurrently by the courts below for the aforesaid offence.

2. The case of the complainant can be summarised as follows:-

On 10-3-2000 the accused approached the complainant in his house at Ezhukonvayal and borrowed a sum of Rs. 3 lakhs. In discharge of that liability the acused issued Exts.P1 and P2 post dated cheques dated 27-6-2000 and 30-6-2000 respectively for Rs. 1,50,000/- and Rs. 1,50,000/- respectively drawn on the Mundiyeruma branch of Balagram Service Co-operative Bank Limited on an account maintained by the accused as S.B. Account No. 210. The complainant presented the cheques through the Ezhukonvayal branch of the Ezhukonvayal Service Co-operative Bank on 7-4-2000 and the same were dishonored on 12-7-2000 for the reason that

funds were insufficient in the account of the accused as evidenced by Ext. P3 to P6 dishonour memos. Thereafter, on 20-7-2000, the complainant caused to be sent Ext.P7 statutory notice demanding the cheque amount. Eventhough the accused duly received the notice as evidenced by Ext.P9 acknowledgment card, instead of making the payment the accused sent Ext.P10 reply notice raising false and untenable contentions. Hence, the complaint.

3. The accused examined himself as D.W.1 and got marked Exts.D1 to D7. The defence set up by the revision petitioner was as follows:-

During the years 1998-1999 the accused along with P.W1 (Complainant) one Ravi, Pappachi and Ummerkhan were doing a joint business at Tamil Nadu. In the year 1998 the accused borrowed a sum of Rs. 10,000/- from the complainant (P.W.1) and entrusted two blank signed cheque and stamp paper with P.W.1. Thereafter he repaid the said amount borrowed from P.W.1. But P.W.1 failed to return the cheques entrusted by him . Thereafter disputes arose between P.W.1 and the accused in respect of the joint business. He has not gone to the house of P.W.1 on 10-3-2000 nor has he borrowed an amount of three lakhs as alleged. On 15-2-2000 he was remaned to judicial custody by the Judl.First Class magistrate,

Uthamapalayam in connection with Crime No. 27 of 2000 of Uthamapalayam Police Station and he was in judicial custody in the Sub Jail, Uthamapalayam for two months. on 10-3-2000, i.e. the date on which the alleged borrowal was made he was in the Sub Jail.

4. Originally, as per judgment dated 24-1-2004 the trial court accepting the defence set up by the revision petitioner acquitted the revision petitioner of the offence. The trial court had inter alia observed that on 10-3-2000 when the alleged borrowal was made the revision petitioner was in judicial custody in the Sub Jail, Uthamapalayam in Tamil Nadu. Aggrieved by the acquittal, the first respondent/complainant preferred Crl.A. 150 of 2005 before this Court. As per Judgment dated 21-10-2005 this Court set aside the acquittal and remanded the case back to the trial court for adducing appropriate further evidence for a satisfactory disposal of the controversies is raised. After the remit, the trial court as per judgment dated 2-3-2006 convicted the revision petitioner. On appeal preferred as by the revision petitioner Crl.A. 93 of 2006 before the Sessions Court, Thodupuzha that court dismissed the appeal. Hence, this Revision.

5. After hearing both sides and perusing the records, I am of the view for reasons to be stated hereinafter that this is a fit case in

which apart from the fact that the case of the complainant is inherently improbable the accused has succeeded in rebutting the presumptions under Sections 118 and 139 of the Act in favour fo the complainant.

6. Even in Ext.p1 statutory notice the specific case of the complainant examined as P.W.1 was that the borrowal was on 10-3-2000. In Ext.P10 reply notice eventhough the revision petitioner had admitted a borrowal of Rs. 10,000/- from P.W.1 and a discharge on 30-10-1999, he had categorically denied any borrowal of Rs.3,00,000/- on 10-3-2000 or on any other occasion. After the remand by this Court, the complainant for the first time stated that 10-3-2000 was a clerical error for 10-2-2000. He had absolutely no explanation as to how the said clerical error occurred. After the remit, P.W.1 was examined further. He filed a proof affidavit on 7-1-2006. As per the proof affidavit, he would say that 10-3-2000 mentioned in both Ext.P7 statutory notice as well as the complaint was a mistake for 10-2-2000, that when the mistake was found out and pointed out to his counsel Babu Mohan, he advised P.W.1 that the date of transaction or issuance of cheque was not at all material and that there was no need to rectify the mistake, that he is producing four additional documents as Exts.P12 to P15 which are respectively an

agreement dated 14-7-1998 executed by P.W.1 and one Raghavan Nair, true copy of an agreement dated 10-5-1999 between P.W1's mother and one Sivadasan wherein P.W.1 has signed as an attesting witness, a chit written and signed by the accused on 9-2-2000 and handed over to the father of P.W.1 to be given to P.W.1 and a copy of the paper report dated 19-2-2000 of Malayala Manorama daily regarding the implication of the accused in a counterfeit coin case. After the filing of the additional proof affidavit as above the complainant was cross-examined on behalf of the accused. during such cross-examination P.W.1 confessed as follows:-

> "അന്യായത്തിൽപറഞ്ഞിരിക്കുന്ന date - കൾ സത്യമാണ്. അന്യായം അമെന്റ് ചെയ്യാൻശ്രമം നടത്തിയിട്ടില്ല."

7. He again re-iterated as follows with regard to his earlier deposition prior to the remand by this Court:-

> "25-10-2003 ൽ സത്യം ചെയ്ത് മൊഴി കൊടുത്തത് കളവാണോ ? കളവല്ല. ആ മൊഴിയിൽ പറഞ്ഞത് സത്യമാണ . ആ മൊഴിയിൽ പറഞ്ഞ ഓരോ വാക്കും സത്യമാണ്."

8. According to P.W.1 one Joichan was present when the accused came to his house and borrowed the money. But for reasons

best known to P.W.1 he did not examine the said Joichan as a witness. P.W.1 would further have it that he had with him a sum of Rs. 12,000/- and 40,000/- which he mobilised by selling his cows and pledging his ornaments. He claimed himself to be an agriculturalist. But during his cross-examination he would say that he was doing coolie labour and also the job of a driver and a broker. He confessed that he does not have even one cent of landed property.

9. Ext.P13 is a small slip of paper which was produced by him after the remand by this Court. It reads as follows:-

ഏഴുക്കുംവയൽ
09-02-2000

"അനി അറിയുന്നതിന ്, ഞാൻ ഒരല്പം late ആയാണ് വന്നത്. നാളെ രാവിലെ 11 മണിക്ക് ഇവിടെ വരും. Joseph - നോട് പറയണം."

Below the above writing there is a signature which reads "Ramachandran". P.W.1 would have it that Ext.P13 is a slip of paper which was handed over to his father (P.W.2) by the accused on 9-2-2000 and it was on the next day that the accused borrowed the amount from him. According to P.W.1 Ext.P13 slip contains the signature of the accused. Even a small child can say that the alleged

signature of the accused in Ext. P13 slip has absolutely no resemblance at all with the admitted signatures of the accused in Exts.P1 and P2 cheques and in the deposition of the accused examined as D.W.1.

10. As against the above testimony of P.W.1 regarding the source of money, his father examined as P.W.2 would say that his wife's property had been sold in connection with the marriage of his daughter and a sum of Rs. 3,00,000/- forming the sale consideration of the sale of P.W.1's property had been entrusted with one Manikkunnel Sabu and that the accused had requested him to lend him the said amount of Rs. 3,00,000/- entrusted with Manikkunnel Sabu. When P.W. 1 has confessed that he owns not even a cent of land, his father would say that the property of P.W.1 was also sold along with his property. P.W.2 would say that on 9-2-2000 the accused had come to his house at about 11 a.m. and asked for the money and since P.W.1 was not there the accused left saying that he would return on the next day at 11 a.m and handed over Ext.P13 slip. If the accused had met P.W.2 and had requested him to keep the money ready on the next day, one fails to understand as to why the accused should hand over a slip to be given to P.W.1 and why should P.W.1 keep this document away during the earlier trial when the specific case

of the accused even in Ext.P10 reply was that he was in jail on 10-3-2000 when the alleged borrowal was made. There cannot be any doubt that Ext.P13 slip is a document cooked up for the purpose of this case. This is a case in which the accused has been denying the alleged borrowal of Rs. 3,00,000/- right from the stage of his reply notice. It is only after the remand of the case by this Court that Ext.P13 slip was introduced for the first time.

11. P.W.3 whose name is Alosious is the person who allegedly advanced money to P.W.1 for payment to the accused . But what P.W.3 would say is that he advanced a sum of Rs. 50,000/- to P.W.1 to be made available to the accused. He confessed that there was absolutely no receipt or other document evidencing the borrowal of Rs. 50,000/- by P.W.1. Manikkunnel Sabu with whom P.W.2 claims to have entrusted Rs. 3,00,000/- and which was allegedly taken back later for the purpose of advancing the amount to the accused is a material witness who was, for reasons best known to P.W.1, not examined.

12. A perusal of Exts.P1 and P2 cheques will show that the signatures therein are different from the other writings in those cheques which probabilises the case of the accused that he had entrusted two signed blank cheques with P.W.1 while borrowing a sum

of Rs. 10,000/- from P.W.1. Merely because the accused has not been able to substantiate his further case that he discharged the said loan, it does not follow that the case of P.w.1 that the accused borrowed Rs. 3 lakhs from him is true.

13. On the facts and circumstances of the case, I have no hesitation to conclude that the accused has rebutted the presumptions available to P.W.1 under Secs. 118 and 138 of the Negotiable Instruments Act, 1881. The courts below have failed to appreciate the evidence in its proper perspective resulting in deflection of justice amounting to an error of law. The conviction recorded and the sentence passed against the Revision Petitioner overlooking the above vital aspects cannot, therefore, be sustained and are accordingly dislodged. The revision petitioner is acquitted of the offence punishabale under Section 138 of the Negotiable Instruments Act, 1881 and is set at liberty.

In the result, this revision is allowed as above.

V. RAMKUMAR, JUDGE

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